



ORIGINAL

FILED

02/27/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0114

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0114

FILED

FEB 27 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

JAY STEVEN HUBBER,

Petitioner,

v.

ORDER

MONTANA SECOND JUDICIAL DISTRICT
COURT, HON. ROBERT WHELAN,

Respondent.

Petitioner Jay Steven Hubber seeks a writ of supervisory control to reverse a February 23, 2024 order of the Respondent District Court granting the State's motion in limine in that court's cause numbers DC 22-11 and 22-12, in which Hubber is the defendant. Trial is scheduled to begin on March 4.

Hubber argues that because the District Court's order "guts" his ability to defend against the charges, appeal is not an adequate remedy. He requests this Court to grant his petition and accept supervisory control, stay further proceedings in the criminal case, and order more extensive briefing pursuant to M. R. App. P. 14(7)(b) on the issue whether there is a bondsman's privilege in the State of Montana.

Hubber, a bail bondsman, is charged in Butte-Silver Bow County with Deliberate Homicide by Accountability, in violation of §§ 45-5-102 and 45-2-302, MCA, and alternatively with Aggravated Burglary, in violation of § 45-6-204(2), MCA. The Amended Information alleges that Hubber "committed aggravated burglary or any other forcible felony, and in the course of committing an aggravated burglary, W.H. was shot which caused his death." The death occurred after Hubber entered a residence in Butte to arrest David Sandoval, for whom Hubber had written bail bonds to secure his appearance on pending misdemeanor and felony charges. Sandoval had not appeared, and the courts had issued

warrants for his arrest. When Hubber entered the home—the residence of the victim William Harris—to arrest Sandoval, an altercation ensued during which Harris was shot by a person who had accompanied Hubber to assist him.

The District Court granted the State’s motion in limine, precluding Hubber from arguing that he had the benefit of a “bondsman privilege.” The District Court previously had denied Hubber’s motion to dismiss on the same legal theory. The court reasoned in part that Sandoval was not in his own residence and that the victim, Harris, had a right to privacy in his home. The court reiterated in its Order on Motions in Limine that there is no “bondsman privilege” in Montana, and as such, Hubber’s entry into the property was unlawful. “To allow this entry,” the court explained, “would essentially elevate the authority of a bondsman over and above trained law enforcement.” The court indicated further that it was not persuaded that Hubber believed Sandoval lived there.

Hubber claims that his entry into the residence where Sandoval was staying was lawful, and the District Court’s order denies him the right to present a defense. He argues that the District Court erroneously ruled that there is no bondsman’s privilege in Montana and erred further when it reasoned that Harris’s right to privacy in his own home obviated a bondsman’s privilege to enter a home that was not Sandoval’s residence, even if that was the address he provided in paperwork and where he was staying.

Supervisory control is an extraordinary remedy that is sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when the other court is proceeding under a mistake of law and is causing a gross injustice, constitutional issues of state-wide importance are involved, or, in a criminal case, the other court has granted or denied a motion to substitute a judge. M. R. App. P. 14(3). We determine on a case-by-case basis whether supervisory control is appropriate. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted). It is the Court’s general practice to refrain from exercising supervisory control when the petitioner has an adequate remedy of appeal. *E.g., Westphal v. Mont. Eleventh Judicial Dist. Court*, No. OP 21-0387, 2021 Mont. LEXIS

Hubber argues that because the District Court's order "guts" his ability to defend against the charges, appeal is not an adequate remedy. He does not dispute, however, that he retains the right to seek review of the District Court's orders on appeal should he be convicted. We generally do not grant supervisory control to review evidentiary rulings prior to trial. Here, in addition, the trial court's order indicates a factual issue regarding Sandoval's residence, which is not appropriate for supervisory control.

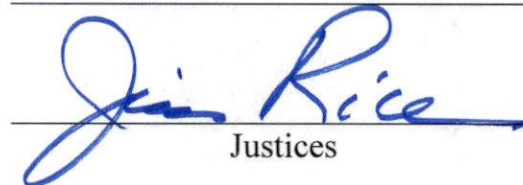
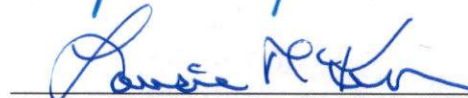
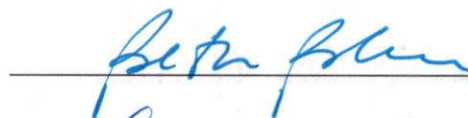
IT IS THEREFORE ORDERED that the petition for writ of supervisory control is DENIED and DISMISSED.

The Clerk is directed to provide immediate notice of this Order to counsel for Petitioner, to all counsel of record in the Second Judicial District Court, Butte-Silver Bow County, Cause Nos. DC-21-11 and 22-12, and to the Honorable Robert Whelan, presiding Judge.

DATED this ¹³27 day of February, 2024.



Chief Justice



Justices